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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,366	04/16/2002	Thomas L. Toth	GEMS8081.102	4573

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EXAMINER	
ROY, BAISAKHI	

ART UNIT	PAPER NUMBER
3737	

NOTIFICATION DATE	DELIVERY MODE
06/10/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/063,366	TOTH, THOMAS L.	
	Examiner	Art Unit	
	BAISAKHI ROY	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 March 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10 and 13-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10 and 13-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/23/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/23/09 has been entered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-10 and 13-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of

copending Application No. 11/465,908. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in application '908 are directed to a method and apparatus for multi-energy data acquisition in a CT system and includes a number of HF electromagnetic filters where each filter is positioned in a path of the electromagnetic energy source as the energy source is energized to different voltages corresponding to different energy states. Therefore the claims in '908 anticipate the claims in this application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-10 and 13-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/465,947. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in application '947 are directed to a method and apparatus for multi-energy data acquisition in a CT system and includes a number of HF electromagnetic filters where each filter is positioned in a path of the electromagnetic energy source as the energy source is energized to different voltages corresponding to different energy states. Therefore the claims in '947 anticipate the claims in this application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-10 and 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (previously cited) in view of Ikeda (JP 2001-87254) (cited on IDS submitted 3/23/09-translation already scanned).

Gordon et al. disclose a CT system comprising: a rotatable gantry (124) having an opening (126) for receiving a subject to be scanned; an HF electromagnetic energy source (128) configured to project a number of HF electromagnetic energy beams toward the subject; a generator (136) configured to energize the HF electromagnetic energy source to at least a first energy state (V_1) and a second energy state (V_2) (col. 7, lines 12-32); a number of HF electromagnetic energy filters (270, 272) positional between the HF electromagnetic energy source and the subject, the number of HF electromagnetic energy filters include at least a first filter (270) and a second filter (272).

The system includes a computer readable storage medium having a computer program stored representing a set of instructions that when executed by the computer causes the computer to carry out the method steps of positioning the first filter (270) between the HF electromagnetic energy source and the subject when the HF electromagnetic energy source is energized to the first energy state, a first voltage (V_1) and the second filter (272) is positioned between the HF electromagnetic energy source

and the subject when the HF electromagnetic energy source is energized to the second energy state, a second voltage (V_2) (col. 13, lines 57-66); and wherein only one of the first filter and the second filter is positioned between the HF electromagnetic energy source and the subject when the HF electromagnetic energy source is energized either to either one of the first energy state or the second energy state. Therefore the filter segments have different filtering powers being energized to different energy states and different voltages. Gordon et al. also teach said electromagnetic energy source and filters being rotatable about the subject (col. 14 lines 5-17).

The electromagnetic energy source and the electromagnetic filters are rotatable about the subject (col. 6 lines 23-62). The disk 124 with the filters rotates about its rotation axis 127 transporting x-ray source 128 and detector array 130 about the object 112 as the object is transported through the gantry and the energy level of the alternates between high and low energy for each rotation of the disk. The scanning or imaging system 120 uses known helical volumetric reconstruction techniques to generate volumetric CT images that are representative of the object passing through the beam.

The filtering apparatus includes a center portion of the wheel having a generally circular cross-section (col. 13 lines 15-20), with segments or connection ports for each filter up to six filters (col. 13 lines 24-39).

The scanner is useful for scanning luggage or mail packages (col. 16 lines 45-48).

With respect to the filtering apparatus structure, the individual filter segments, 270 and 272 as the spokes extending from the center of the metal disk 262. Gordon teaches a filter 262, divided into six thin and thick segments alternately disposed on the metal disk (col. 13, lines 24-39). Gordon also teaches that the segments 270, 272 are alternately disposed as the filter rotates between the two energy levels (col. 14 lines 50-67, col. 15 lines 1-9). However Gordon et al. do not explicitly teach a hub structure with the filter segments extending outward from the hub and where the filter segments are perpendicular to each other along the hub. Gordon et al. also do not explicitly teach the use of the imaging device for imaging medical patients. In the same field of endeavor Ikeda discloses a filtering system for an electromagnetic or x-ray medical image diagnostic apparatus for imaging a medical patient, where the filtering apparatus includes filter unit 303 comprising four attached filter 401a-401d rotatably supported by the motor 501 and connected to a hub or filter support 402 with a generally circular cross-section and the filters are arranged perpendicular to each other on the filter support (fig. 4, [0049]). Therefore the filter unit 303 includes four filter segments connected to the hub or filter support and positioned 90° along the hub or filter support and may be inserted/bolted/removed or integrated as a single body in the spoked relationship with the hub or filter support.

The filter unit 303 with the attached filters can be rotated around the axle 302 and causes the filter unit to be disposed within the path of the x-ray beam emitted through the x-ray emission port 305 [0046]. The attached filters modulate the energy distribution of x-ray beam impinging upon the subject and allowing capture of an x-ray image with

different energy beams [0077]. Therefore the filter support 402 is secured with the axle 302 positioned orthogonally to the attached filter unit 303 with the attached filter units 401a-d and the axle 302 rotation causes the cycle of rotation of the attached filter unit 303 along with units or filter segments 401a-d [0050]. The hub or filter support is configured to rotate about an axis of rotation orthogonal to x-ray emitting from the x-ray source. The attached filter may be configured to be the same or different types and therefore of the same or different filtering power [0080].

It would have therefore been obvious to one of ordinary skill in the art to use the filter unit as taught by Ikeda to modify the filtering apparatus of Gordon such that the individual rotatable filter segments 270, 272 can be supported on a hub structure and are perpendicular to each other on the hub structure such that with the axis of rotation of the filter unit, only the respective individual high or low energy filter segment is between the subject and the electromagnetic energy source.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (7:30 a.m. - 4p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BR
/Baisakhi Roy/
Examiner, Art Unit 3737